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No. RM-9345

**Petition for Declaratory Ruling and
Rulemaking With Respect to Defining,
Predicting and Measuring "Grade B"
Intensity" for Purposes of the Satellite
Home Viewer Act**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Echostar Communications Corporation)	No. RM-9345
)	
Petition for Declaratory Ruling and)	
Rulemaking With Respect to Defining,)	
Predicting and Measuring "Grade B")	
Intensity" for Purposes of the Satellite)	
Home Viewer Act)	

COMMENTS OF SUPERSTAR/NETLINK GROUP, LLC

Superstar/Netlink Group, LLC ("SNG") hereby submits these Comments in response to the Commission's Public Notice issued August 26, 1998 (DA 98-1710) and the Commission's Order released September 4, 1998 (DA 98-1800) in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

SNG supports the requests made in Echostar's Petition for Declaratory Ruling and Rulemaking. The Commission must amend its method of measuring and calculating "Grade B" signal strength so that the purposes of the Satellite Home Viewer Act, 17 U.S.C. § 119 ("SHVA") can be achieved. Unless the Commission adopts a sensible and workable signal strength standard that will permit consumers who cannot receive network signals off-air to receive distant broadcast network signals by satellite, as many as 9 million households –

nearly one tenth of the total number of television households – will be deprived of access to satellite delivered network television programming and have no off-air alternative source for that programming. Many of those households will likely look to other multichannel distribution technologies (none of which are burdened by the Grade B "unserved" household limitations) for their video programming services. More importantly, many of the disenfranchised households will simply have no access to network programming from any source. Accordingly, reworking the Grade B standard is essential to the survival and growth of the Direct-to-Home ("DTH") satellite market, and absolutely necessary to achieving the goals of maximizing availability of broadcast television signals and maintaining multichannel video competition.

II. THE COMMISSION SHOULD AMEND ITS GRADE B CONTOUR DEFINITION SO SATELLITE CARRIERS CAN EFFECTIVELY COMPETE WITH OTHER MULTICHANNEL VIDEO DISTRIBUTION TECHNOLOGIES

As it has been said, "it has long been the bipartisan objective of Congress to de-monopolize the provision of multichannel video services in order to create jobs, lower consumer rates, and create new choices in the marketplace."¹ As part of that objective, Congress has sought to support alternative methods for delivering multichannel video programming to subscribers by adopting SHVA,² defining DTH satellite services as "effective

¹ Letter from Congressmen Billy Tauzin and Edward J. Markey to James Billington, Librarian of Congress, dated Sept. 9, 1997.

² *Satellite Broad. & Communications Ass'n of Am. v. Oman*, 17 F.3d 344, 346-47 (11th Cir.), cert. denied, 115 S.Ct. 88 (1994); 17 U.S.C. § 119. The original satellite royalty fees established by Congress when it passed SHVA in 1988 approximated the license fees cable operators paid for the same or similar superstations and distant broadcast network signals. *In the Matter of Rate Adjustment for the Satellite Carrier Compulsory*

competition" to cable,³ and adopting "program access" rules under which program suppliers of satellite cable programming are required to sell programming to DTH distributors on rates and terms that did not discriminate in favor of cable distributors.⁴ Additionally, when the 1988 satellite license was scheduled to sunset at the end of 1994, Congress extended it with explicit directives to cultivate DBS as a competitor to cable and to look to cable parity as the "benchmark" for DTH royalties.⁵ DTH (both C-band and DBS) currently provide real competition in the multichannel video marketplace, serving collectively nearly 10 million subscribers.

However, the disputes concerning the extent of Grade B contours have made DTH competition less likely to continue. In the FCC's Chairman's own words: "[c]urrent satellite television subscribers, and those consumers considering purchasing satellite television service that cannot receive local service, are thus less likely to consider satellite service

License, Docket No. 96-3 CARP-SRA, Report of the Panel (August 28, 1997) at 12, *aff'd in part and rev'd in part*, Final Rule and Order, 62 Fed. Reg. 55742 (Oct. 28, 1997), *appeal pending*, *SBCA v. Librarian of Congress*, No. 97-1659 (D.C. Cir).

³ 47 U.S.C. §§ 543(l), 522(13); *In re Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC Rcd 5631, ¶¶19, 32 (1993); *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, First Report, CS Docket No. 94-48, 9 FCC Rcd 7442, ¶¶ 37-50, 61 (1994)(cable and DTH operate in the same product market).

⁴ "The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies." 47 U.S.C. § 548(a).

⁵ 140 CONG. REC. S14105, S14106 (daily ed. October 4, 1994) (Statement of Sen. DeConcini); 140 CONG. REC. H9270 (daily ed. September 20, 1994) (Statement of Rep. Brooks); 140 CONG. REC. H9271 (daily ed. September 20, 1994) (Statement of Rep. Hughes); 140 CONG. REC. H9272 (daily ed. September 20, 1994) (Statement of Rep. Synar).

without network broadcast signals to be an effective alternative to cable television service."⁶

It is ironic that it is the FCC's own regulations that have caused this anomaly.

SHVA incorporates the FCC's definition of "Grade B" signal intensities to determine whether or not subscribers are eligible to receive distant network signals. Under SHVA, if a subscriber receives a network signal of Grade B intensity off-air, that subscriber is not eligible to receive distant signals of that network.⁷ "[I]t rapidly becomes clear that the [Grade B] definition is key to whether many consumers will have real choice of programming providers."⁸ The use of Grade B contours, as currently defined by the Commission, is causing mass confusion and anger; unless and until that standard is changed, DTH competition will be stifled and many consumers will be deprived of any real choice of multichannel video program providers and in far too many instances, denied access to the one possible source for network programming.

⁶ Letter from Chairman William E. Kennard to Senator John McCain, and Representative Tom Bliley dated September 4, 1998 ("Kennard Letter"), at 3.

⁷ 17 U.S.C. §§ 119(a)(2)(B); (d)(10).

⁸ Letter from Larry Irving, NTIA, to Chairman William Kennard dated September 4, 1998, ("NTIA Letter") at 2.

A. The DTH Industry Can Only Effectively Compete in the Multichannel Video Programming Marketplace with a Workable Standard for Determining Off-Air Signal Availability

SNG is the largest distributor of C-band satellite entertainment programming in the United States, offering television programming services under the Superstar, Netlink, and Turner Vision brand names directly to over one million active C-band subscribers.⁹ SNG's television programming services are offered in packages, as well as on an a-la-carte basis, and include cable network services, superstations, and broadcast network services. In a declining market, SNG has been able to limit the number of its subscribers who leave the C-band market, to less than half of the industry's rate of decline.¹⁰ Over fifty percent of SNG's subscribers receive at least one distant broadcast network signal from SNG, through PrimeTime 24 or Netlink International ("Netlink").

SNG acts as a distributor of distant network signals for both PrimeTime 24 and Netlink International, offering each satellite carrier's distant broadcast network signals to

⁹ Predecessors to SNG have been providing services to the DTH market since 1987. Originally operating as Superstar Connection, the company was later known as Superstar Satellite Entertainment, and after its merger with Netlink, became known as Superstar/Netlink Group. SNG's parent, United Video Satellite Group ("UVSG") also owns and operates satellite uplink facilities and distributes superstations and network stations (the Netlink complement) by satellite to C-band subscribers and distributors, as well as to high powered DBS distributors, cable operators, and other multichannel video distribution technologies.

¹⁰ The C-band subscriber count as of July 1998 is just now over two million. SkyREPORT, Aug. 1998, at 3. The C-band market had been as high as 2.3 million subscribers as of the end of 1996, but has been declining steadily for the most part due to owners switching to DBS services. *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, 13 F.C.C. Rcd 1034 (1998) at ¶¶ 69-70.

"unserved" C-band customers throughout the United States.¹¹ The only customers who are eligible to receive one or more distant broadcast network signals are those who do not receive an over-the-air signal of "Grade B intensity," as defined by the FCC, of a local network affiliate.¹² Because many of SNG's customers are not able to receive an acceptable or even viewable signal (of any particular intensity or strength) from their local broadcast stations by using a conventional outdoor, rooftop receiving antenna, there is a high demand for the broadcast network signals SNG offers.

Until the litigation involving Primetime 24 was decided this year, SNG, along with all other distributors of satellite-delivered broadcast networks, relied on a careful script of questions designed to accurately determine whether an individual household likely received a Grade B signal of each network. SNG customer service representatives ("CSRs") asked the subscriber if the network signal could be received off-air. Only if the subscriber told the CSR he or she could not watch the network programming on their set, would SNG allow the distant network signal to be sold and delivered to that subscriber.

Although the congruence of Grade B signal intensity and viewability has been hotly contested (all agree, however, that reception of a Grade B signal does mean that a

¹¹ Netlink's broadcast network service is packaged as the "Denver Six" which consists of ABC, CBS, NBC, Fox, PBS and independent programming from Denver, Colorado, in the Mountain time zone. PrimeTime 24 offers two complements of network signals, "PrimeTime 24 East" and "PrimeTime 24 West." Included are the major networks from East Coast and West Coast time zones.

¹² 17 U.S.C. §§ 119(a)(2)(B); 119(d)(10). Grade B signal intensities are measured in dBu (dB above one micro-volt per meter) and are set forth in 47 C.F.R. § 73.683. The manner of predicting Grade B coverage (as well as Grade A) is set forth in 47 C.F.R. § 73.684.

picture can be seen on a television set at all) the best any distributor could do in any economically efficient manner was rely on the subscriber's responses in order to reasonably determine if a Grade B signal was received in the subscriber's household. No maps or other database had previously been made available to determine if any particular home was inside or outside any predicted or terrain-adjusted Grade B signal contour. Moreover, as far as actually testing to determine if a Grade B signal is received, no one to date "ha[s] offered any solution as to how to conduct meaningful intensity measurements that are cost efficient for satellite carriers."¹³

The PrimeTime 24 litigation fundamentally changed the entire methodology for determining eligibility to receive satellite delivered network signals. Before July 1, 1998, SNG had been able to offer both Netlink and PrimeTime 24 network signals to consumers using the same system of questioning subscribers for determining whether subscribers were eligible to receive distant network signals. After the PrimeTime 24 litigation was commenced, Netlink (and as a consequence all distributors including SNG that distribute Netlink's network signals) began negotiations to establish a new screening system. Since July 1, 1998, due to three separate but distinct sets of circumstances – the voluntary agreement reached between Netlink International and the National Association of Broadcasters,

¹³ *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, A Report of the Register of Copyrights, U.S. Copyright Office (Aug. 1, 1997) ("Copyright Reform Report") at 127. The Copyright Office also noted that "as long as the cost of measurement exceeds the revenue of the service, there is no economic incentive to conduct the measurement." *Id.*

commonly referred to as the “Red Light/Green Light” agreement,¹⁴ a federal court ruling in Miami, Florida,¹⁵ and a federal court ruling in Greensboro, North Carolina¹⁶ – SNG now must implement three different methodologies in order to continue offering and providing customers with broadcast network signals.

While SNG has been turning customers away who do not qualify for network services under the “Red Light/Green Light” qualification system since July, it has already begun disconnecting subscribers pursuant to the Greensboro, North Carolina order, and it is preparing to turn off several hundreds of thousands of subscribers who have been receiving network services since March 11, 1997, pursuant to the Miami court’s ruling, unless the Miami court’s order is stayed or modified. But, without clarification of Grade B signal intensity as it relates to SHVA, and without one uniform approach that can be applied to distribution of all network services, consumer confusion and anger will continue, causing

¹⁴ In May of this year, Netlink International and PRIMESTAR, Inc., both satellite carriers as defined under SHVA, entered into a voluntary agreement with the National Association of Broadcasters establishing a zip code based qualification system for the satellite delivery of broadcast network signals whereby each seven-digit zip code in the United States, its territories, possessions and commonwealths was to be analyzed and then coded as “red” or “green.” Any zip code area completely within the predicted Grade B contour was given a “red light,” and all subscribers within that zip code were deemed ineligible to receive the distant network signals provided by Netlink International or PRIMESTAR. Any zip code area completely outside the predicted Grade B contour was given a “green light,” and all subscribers within that zip code were deemed eligible to receive distant network signals provided by Netlink International or PRIMESTAR. The zip code areas that crossed the over the predicted Grade B contours were classified as “red light” or “green light” depending on the percentage of the area lying within the Grade B contour, clearly defining many clearly unserved subscribers as ineligible.

¹⁵ *CBS, Inc. et al. v. PrimeTime 24 Joint Venture*, No. 96-3650-CIV-NESBIT (S.D. Fla. May 13, 1998) (District Court affirming in part and reversing in part Magistrate Judge Johnson’s Report and Recommendation); *CBS, Inc. et al. v. PrimeTime 24 Joint Venture*, No. 96-3650-CIV-NESBIT (S.D. Fla. July 10, 1998) Supplemental Order Granting Plaintiffs’ Motion for Preliminary Injunction (rejecting questionnaire process and ordering new regime for determining eligibility of subscribers and deauthorizing ineligible subscribers, which includes creating maps of predictive contours for every network broadcast station).

¹⁶ *ABC, Inc. v. PrimeTime 24 Joint Venture*, Civil Action No. 1:97CV0090 (M.D.N.C. July 16, 1998).

devastating results to satellite carriers, such as SNG, who provide many American consumers with the only available television programming services.

Indeed, aside from the operational complications caused by implementing separate qualification systems, customer confusion and dissatisfaction has been enormous. In many cases, customers are unable to understand why, if they cannot receive their local network signals off-air with their existing equipment and antennas, they may be able to receive network programming in the Mountain time zone provided by Netlink International, but they may not receive the PrimeTime 24 network signals in the West Coast time zone in which they live. Customer anger is only heightened in those instances where SNG is forced to deny customers who do not currently receive acceptable over-the-air network signals access to any network programming from Netlink or PrimeTime 24.

The unserved household restriction has created considerable turmoil not only between satellite carriers and broadcasters, but between consumers and the federal government. The Copyright Office has received more congressional inquiries on the eligibility of satellite subscribers for network service than any other matter in its history, and the FCC (as well as the Office) has been bombarded with literally thousands of calls and letters from irate subscribers who, for the most part, believe that federal law prevents them from obtaining network programming that they are willing to pay for and want to see.¹⁷

In apparent recognition of the even greater confusion, anger, and dissatisfaction that is sure to follow a massive turn-off of subscribers as a result of the federal court orders, the National Association of Broadcasters, PrimeTime 24, and the Satellite Broadcasting &

¹⁷ Copyright Reform Report at 116.

Communications Association are reportedly negotiating a request for an extension of the Miami court's October 8th deadline for deauthorizing ineligible subscribers.¹⁸ While an extension until 1999 will relieve the immediate pressure on carriers and subscribers, it only delays the inevitable because the underlying problem remains: Without a workable and sensible standard for determining eligibility to receive satellite delivered network signals, DTH distributors will not be able to compete in the multichannel distribution marketplace and as many as 9 or 10 million households will be deprived of the ability to receive network signals by satellite although no off-air substitute exists.¹⁹ DTH distributors should be able to provide broadcast network signals to subscribers who do not receive the signals off-air, and those subscribers should be able to receive them by satellite without further judicial or administrative interference.

1. The Challenge and Waiver Process Has Not Proven To Be an Acceptable Alternative to Alleviate the Grade B Anomalies.

Not only does SNG have different systems in place for qualifying subscribers for their eligibility to receive distant network signals, but at the end of each month SNG is required to use two different systems for reporting network subscriber information to both PrimeTime 24 and Netlink International. That information is then forwarded to the relevant

¹⁸ "Tauzin Bill Possible; Industries Near Agreement on Satellite Carriage," Communications Daily, Sept.21, 1998, at 1-2.

¹⁹ NTIA's Institute for Telecommunications Sciences has analyzed Grade B contours as well as the "Longley-Rice" methodology endorsed in the *Miami PT24* litigation, and determined that as many as 9 million households would be ineligible to receive satellite-delivered programming. NTIA Letter at 2. Because the Grade B standard, as set forth *infra* does not predict picture quality or even reception with any acceptable degree of accuracy, as many as 10% of the country's television households would be rendered ineligible to receive satellite delivered network programming.

networks, who then generally issue challenges of eligibility for each subscriber located within the predicted Grade B contour.

Subsequently, SNG spends a considerable amount of time and resources blocking challenged subscribers from receiving distant network signals, and then notifying them that their local network affiliate has challenged their eligibility to receive distant network signals based on the fact that they should be able to receive the local broadcast signal of "Grade B" intensity. SNG is required to block hundreds of customers each month, regardless of whether or not that customer actually receives his or her local network station.

Although it is not set out in SHVA, challenged subscribers may request a waiver of the restrictions from their local affiliate. Currently, waivers must be issued from the local network affiliate(s), they must be in writing, and they are given at the complete discretion of the local network affiliate(s). Some local network affiliates will use maps to see where a subscriber falls within the Grade B contour, and grant waivers based on location. Many local network affiliates, however, simply refuse to grant waivers at all to any subscriber found to be within the predicted Grade B contour, regardless of the affected subscriber's location and regardless of whether or not the affected subscriber can receive the over-the-air network signal.

There is no official process for requesting or granting waivers, which in turns creates even more confusion. Consumers, satellite carriers, and satellite distributors spend

tremendous amounts of time trying to track where waivers were sent by the local affiliates. Waivers are frequently sent directly to the satellite carrier with no reference as to the satellite distributor that marketed the service, which makes tracking extremely difficult. Additionally, because the C-band industry is not a closed system, there is a substantial amount of subscriber churn each month with subscribers changing distributors. If a subscriber previously received a waiver while subscribing to network services with a satellite provider other than SNG, then SNG must find a record of that waiver with the satellite carrier or have the customer request another waiver from the local network affiliate. Then there is the process of reversing the blocks that have been placed in the distributor's system and reauthorizing the customer's network services. The entire process leaves consumers without network programming for extensive periods of time, ranging from weeks to months, and altogether in the case of the local network affiliates who simply refuse to grant waivers at all.²⁰ As it stands, the process does not easily allow for DTH distributors to timely and efficiently provide network signals to subscribers.

B. Grade B Contour Calculations Are Not Designed to Properly Assess Signal Availability to Individual Subscribers

There is no nationwide testing service available to determine, on a cost effective basis, whether any particular household does receive a Grade B intensity signal. For

²⁰ SNG is currently investigating alternatives to the current waiver process, including the implementation of an electronic submission of waiver requests to local network affiliates, either by the consumer directly, or by SNG on behalf of its subscribers, with the local network affiliate responding to the satellite carrier and the satellite distributor electronically. However, this process will be expensive to implement, and there is no guarantee that the local network affiliates will agree to use such a system.

that reason, SNG, along with every other DTH distributor, has had to rely on scripted questions to determine each subscriber's eligibility to receive network signals. Because of the uncertainty of litigation concerning the accuracy of the scripting process in determining whether FCC defined Grade B signals were technically unavailable at a particular subscriber's location, Netlink and PrimeStar reached agreement with the broadcasters using a compromise system based on zip codes to determine whether or not these Grade B signals were received, more or less, in particular, but geographically large, areas.²¹

However, continued reliance on Grade B signal strengths, as currently defined by the Commission, does not really resolve the problem. For example, the Commission recognizes that "at the [Grade B] contour boundary, approximately half of the households cannot receive a Grade B signal."²² Although some have opposed a picture quality standard (which is really the only meaningful test for subscribers) as too "subjective," and argued that Grade B is more "objective" than a picture quality standard, "over-the-air delivery of a signal of Grade B intensity does not guarantee a quality picture."²³ More importantly, the Grade B contour does not even guarantee that half of the households at the boundary receive the Grade B signal, picture quality aside.

²¹ See note 14, *supra*.

²² Kennard Letter at 1.

²³ Copyright Reform Report at 127.

The Grade B contour model is defined that only 50 percent of the households will likely receive an adequate signal *50 percent of the time*, and that reception of inadequate signal at any given time is stated with a confidence level of only 50 percent.²⁴ Indeed, the FCC never intended its Grade B contour methodology to establish whether or not a particular home could receive acceptable signals.²⁵ Consumers today will simply not tolerate this essentially "unpredictable" availability of television signals.²⁶ And SHVA (and the Commission's own competitive initiatives) recognizes that the only reason to deny a subscriber access is if that subscriber receives an off-air signal; not "maybe receives" the signal, or "receives it half the time" or "maybe receives it half the time." Consumers have subscribed to satellite and other multichannel video systems in large part to obtain a greater choice of programming, but many want it to receive decent quality broadcast signals, not just some of the time, *but all of the time*. No multichannel video programming distributor could hope to stay in business if it provided its program services half the time with only a half-assurance that the signal delivered would even be watchable. But under the current standard, if a subscriber receives a signal half the time, even if the signal is not sufficient to give a decent picture, no satellite delivered broadcast signals are permitted. That is simply not a sensible result.

²⁴ EchoStar petition at 4.

²⁵ See, e.g., NTIA Letter at 1. "The legislative history reemphasizes the Commission's paramount role in defining this key phrase [unserved households] by referring specifically to the Commission's field strength contour regulations, which currently only define Grade A and Grade B contours for purposes of tower siting and the multiple ownership rules, but does not provide assurance of actual signal quality to the viewer." (*Id.*, fn. omitted).

²⁶ 47 C.F.R. §73.684(c); Echostar Petition at ____.

Perhaps it should not come as a surprise that the Grade B standard as strictly interpreted and applied would cause these problems. Field strength contours, found in Section 73.683 of the Commission's Rules, 47 C.F.R. § 73.683, are specifically limited in their application to (1) the estimation of coverage resulting from the selection of a particular transmitter site by a TV station applicant; (2) matters relating to multiple ownership of stations; and (3) determining compliance with respect to transmitter location and antenna systems to ensure the minimum field strength is provided over the community to be served.²⁷ Additionally, Section 73.683(b) states that "the curves should be used with appreciation of their limitations in estimating levels of field strength . . . the actual extent of service will usually be less than indicated by these estimates due to interference from other stations."²⁸ Further, "[b]ecause of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated."²⁹

In prior years, the FCC used field strength contours to determine signal availability for the purposes of determining if there were competitive alternatives to cable television systems so as to deregulate cable operators' rates. Prior to the amendments to the Cable Act in 1992, the 1984 Cable Act permitted deregulation of cable rates in areas where the Commission determined in its own rules that there was "effective competition."³⁰

²⁷ 47 C.F.R. § 73.683(c).

²⁸ 47 C.F.R. § 73.683(b).

²⁹ *Id.*

³⁰ See *American Civil Liberties Union v. F.C.C.*, 823 F.2d 1554, 1559 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 959 (1988).

Pursuant to congressional mandate, the FCC developed rules and determined that effective competition was present if at least three "off-air" signals were "available" in any portion of the cable community.³¹ The Commission ruled that an off-air signal was available if a station's Grade B contour was placed over any part of the community.³²

The D.C. Circuit, in reviewing challenges to the Commissions rules, found that the FCC used the Grade B contour to predict the "approximate extent" that a signal was viewable in a community, but that there was "no guarantee that a picture will *in fact* be viewable by those within the range of the contour."³³ Indeed, the fact that a particular house falls within the Grade B contour of a station did not mean that that station can in reality be picked up on a television set in that house.³⁴ The court also noted that "what constitutes a 'viewable' picture for some may not be satisfactory to others."³⁵ The Court found the Grade B measure "highly imperfect" and the margin of error so great in determining availability, that matter was remanded to the Commission.³⁶

³¹ *Id.* at 1560.

³² *Id.*

³³ *Id.* at 1559, n.8 (emphasis in original).

³⁴ *Id.* at 1572.

³⁵ *Id.* at 1559, n.8.

³⁶ *Id.* at 1573. Because the Commission knew of the "practical flaws inherent in its chosen measures," the FCC was required to account for them in amending the rule. *Id.* at 1572

Here, as exemplified by almost every written analysis, Grade B signal strength does not correlate to a viewable picture. The methodology designated to measure a Grade B signal involves a mobile run of 100 feet and an antenna height of 30 feet. This is unrealistic for purposes of SHVA. Most homes do not extend 100 feet, so an outdoor mobile run will have only accidental correlation with a set or home antenna in a fixed location. More importantly, many homes do not now have rooftop antennas, let alone ones that are properly maintained and at a 30 foot height. If an antenna is below 30 feet, it is considerably less likely that it will receive an acceptable off-air picture even if the signal strength at 30 feet is of Grade B intensity.³⁷

Accordingly, in the real world where the Commission will have to determine whether it is unfairly denying access to satellite delivered signals, it will necessarily have to take into account the fact that many homes do not have 30 foot antennas, and that Grade B signal strength at that height does not mean any signal of any particular strength is received at a lower antenna height or is in fact viewable. NTIA's calculations and estimation of the strict application of the Grade B standard explains why there has been such a consumer outcry; obviously many homes that are in areas where a Grade B signal is theoretically available over a well maintained and positioned 30 foot high antenna, have no such viewable signal on their sets. But, unless a household has a viewable picture of a network, there is no reason to deny that household access to a distant network signal delivered by a satellite carrier.

³⁷ "[A]t levels below the 30 foot height, signals are subject to additional shadowing by terrain, trees, and structures that make it extremely difficult to specify a lower antenna height with compensating adjustments to the signal strength level." *In the Matter of Amendments of Part I, 73 and 76*, 3 F.C.C. Rcd 2617, 2619 (1988).

Given the Grade B contour measurement's known imperfections, it is incumbent upon the Commissions to refine the Grade B standard to make sure that signals are not just "theoretically" available, but available and viewable in the households that will be unable to get those signals by satellite. Otherwise, too many households will be unfairly deprived of programming services and choice of programming providers.

CONCLUSION

There is no question that the definition of unserved households and the interplay of that definition in the Commission's regulations of Grade B contours will be determinative of whether consumers have a real choice of programming providers. If SNG and other DTH distributors are no longer able to sell distant broadcast signals to subscribers who truly do not receive local network signals (for example are within the Grade B contours but do not receive reliable or acceptable pictures), those consumers are not likely to find that DTH is a competitive substitute for other multichannel video sources.³⁸ Moreover, current subscribers, as well as those who subscribe to competing technologies, are less likely to consider DTH without network broadcast signals to be an effective alternative to the other multichannel services such as cable, MMDS, SMATV, that all have unfettered access to distant broadcast network signals.³⁹

³⁸ See, e.g., Kennard Letter at 3.

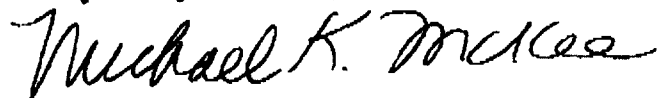
³⁹ *Id.*

Despite the explosion of cable network programming in recent years, broadcast network programming is vital to consumers. But without intervention by the Commission, SNG will be forced to disconnect hundreds of thousands of consumers who currently receive distant broadcast network signals, and it will continue to be forced to turn away subscribers who cannot currently receive over-the-air broadcast network signals. A significant portion of those subscribers are predicted to completely exit the satellite industry, effectively thwarting Congress's efforts to promote competition in the MVPD marketplace, and accelerating the decline of the C-band industry. Worse yet, some consumers will simply have no alternative source for network programming and thus will be deprived of broadcast network services altogether.

The zip code based agreement that Netlink International entered into with the NAB was created at a time when it was thought to be impossible to use a "geo-coding" system to qualify subscribers for receipt of distant broadcast network signals. Since that time, however, geo-coding has become a reality as the satellite industry has searched for solutions to the implementation of the Miami court's ruling. By using a system for all satellite delivered broadcast network services that predicts the outermost boundary at which 99% of households receive a Grade B signal 99% of the time with 99% confidence, SNG could eliminate much of the confusion that exists among its customers today, and prevent the confusion that will occur if SNG is forced to implement the Miami court's order, regardless of whether that implementation date October 8, 1998 or some date in 1999.

Consistent with Congressional directives, the FCC has supported the development of competition in the market for delivery of multichannel video programming services. This competition has resulted in more programming services being available to viewers, lower prices, and better service. Indeed, as set forth in reports to Congress on video competition, DTH is a second most popular video distribution technology. However, the service problems that will be exacerbated by enforcement of the current injunctions and Court orders that are based upon the FCC's definition of Grade B contour in the rules will impede the development of competition and thereby frustrate Congressional and administrative goals. The Commission must reconsider the Grade B contour definition to make it into a workable and reasonable standard for determining eligibility for subscribers to receive broadcast signals by satellite.

Respectfully submitted,



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